IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 392 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANJI BHIMJI JAGANI

Versus

RAJKUMAR P NAIR - DECD. THRO' LEGAL HEIR P V MALLIKA

Appearance:

1. Civil Revision Application No. 392 of 2001

MR ASHISH M DAGLI for Petitioner No. 1-2

MR AK CLERK for Respondent No. 1-3

RULE NOT RECD BACK for Respondent No. 1-3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 10/07/2001

ORAL JUDGEMENT

Heard learned Advocate Mr. A.M. Dagli for the petitioners and Mr. A.K. Clerk for the respondents.

1. The petitioners have challenged the order dated 3-5-1999 passed by the 5th Joint Civil Judge, (S.D.), Rajkot below Exh.23 in the proceedings of Regular Civil Suit no.1539/96. That vide impugned order the trial Court has framed the preliminary issue and directed the

parties to make the submission on the same. That thereafter, after hearing the parties vide further order dated 7-12-2000 the trial Court has held that the Civil Court has no jurisdiction to hear and decide the suit as filed by the petitioners-plaintiffs and consequently has ordered to return the plaint with direction to present the same within 15 days in the Court of Board of Nominees of the Registrar of Co-op.Societies. The Court further ordered that interim injunction granted in the proceedings of the suit shall continue for a period of 15 days and shall stand automatically vacated on presentation of the plaint before the Court of Board of Nominees.

The petitioner has also challenged the order of the learned 3rd Extra Asstt. Judge, Rajkot, dated 16-1-2001 passed in the matter of Civil Misc. Appeal no.2/2001. That the said appeal is preferred by the present petitioner against the above stated order passed by the learned Civil Judge(S.D.), Rajkot below Exh.23 in the proceedings of Civil Suit no.1539/1996.

2. The petitioners are the original plaintiffs of Regular Civil Suit no.1539/96 filed against the present respondents with a prayer to claim perpetual injunction restraining the defendants from causing any interference in actual possession of the property described in the plaint and occupied by the plaintiffs-petitioners. The petitioners have also prayed for interim injunction against forcible dispossession of the plaintiff-petitioner in respect to said property. The present respondents moved application Exh.23 in the Court contending that dispute between the parties is liable to be resolved by the nominee of Registrar of Co-op. Societies, and as such, Civil Court has no jurisdiction. The trial Court having heard the parties has come to the conclusion that jurisdiction of Civil Court is barred under Sec.96 of the Gujarat Co-op. Societies Act, and thereby, Civil Court has no jurisdiction to try and decide the suit, and hence, impugned order is passed.

3. On behalf of the petitioners, it is submitted at the Bar that as per the averments made in the plaint, the plaintiff has claimed right to protect actual possession of the disputed property and the relief is based on possessory right to restrain the defedants from causing interference in the peaceful enjoyment of possession of said property and from forcibly dispossessing the plaintiffs- petitioners therefrom. That thereby, the dispute between the parties could not be said to be dispute within the purview of Section 96 of the Gujarat

Co-op. Societies Act. It is further submitted that the present plaintiffs are not the members of the said Co-operative Society, and thereby also, Section 96 of the Gujarat Co-operative Societies Act cannot be attracted. Reliance is placed on the observations made by this Court in the matter of MAHAVIR COTTON CO., SURENDRANAGAR V. SAURASHTRA CO-0P.SPG. MILLS LTD., 1995(2) G.L.R 1394.

4. On behalf of the respondents one Anilkumar Patel the power of attorney holder of the respondents has filed affidavit dated 24-6-2001 contending that the disputed land bearing plot nos.29 and 30 of Shri Shastrinagar Co-operative Housing Society Ltd, Rajkot, are allotted to the respondents by the Society. That said Society has filed Regular Civil Suit no.355/84 against the present petitioner for the relief of restraining the petitioners from putting up construction on plot no.31 of the Society. That in the proceedings of said suit, the present petitioners had taken a defence and rasied a preliminary objection that petitioners were the members of the Society, and as such, the Civil Court had no jurisdiction to entertain the suit. The deponent has annexed copy of the plaint filed by the Society being Regular Civil Suit no.355/1984 with the affidavit. That the Civil Judge (S.D.), Rajkot, by judgment and order dated 30-9-1985 held that the Civil Court had no jurisdiction to entertain the said suit and that the plaint be returned to the plaintiffs for presentation to the proper Court. The judgment and order dated 30-9-1985 is also annexed with the affidavit.

5. It has been submitted on behalf of the respondents on the basis of the said fact that plaintiffs have suppressed the material facts in the plaint and the facts apparent from the documents produced by the respondents clearly suggtest that suit dispute between the parties is in respect to land allotted by the Co-operative Society and the respondents being members of the Society and the petitioners either are the members or claiming possession of the disputed land through a member of the said Society, the dispute is covered under Sec.96 of the Gujarat Co-operative Societies Act, 1961, and thereby, the impugned order being just, proper and reasonable, no interference of this Court is warranted.

6. Ordinarily, the initial jurisdiction of the Court could be determined on the basis of averments made in the plaint, however, if the defendant having appeared in te proceedings of the suit has raised contention regarding want of jurisdiction in the written statement and has brought to the notice of the Court that plaintiff has

mischievously suppressed the material facts and has made twisted averments in the plaint so as to create a jurisdiction of a particular Court with intention to avoid the jurisdiction of the competent Court, the Court could raise a preliminary issue regarding jurisdiction under Order 14 Rule 2 of CPC and decide the same. That while deciding such issue, the Court can look into the material produced by the defendant not only to controvert the averments made in the plaint but to point out the real controversy between the parties and determine the jurisdiction on the basis of core dispute involved in the matter.

That,in the instant case, the facts produced by the defendants-respondents before the trial Court clearly suggest that suit dispute is covered under Sec.96 of the Gujarat Co-operative Societies Act, 1961. It is true that reasons assigned by the trial Court in the impugned order are not clear and cogent, however,if the facts emerging from the affidavit filed on behalf of the respondents is construed in the context of facts emerging from the documents annexed with the affidavit of the respondents, the real controversy between the parties suggests the nature of the dispute which squarely falls within the purview of Sec.96 of the Gujarat Co-operative Societies Act.

That the lower Appellate Court has rightly construed the documentary evidence produced by the defendants in the suit and in consideration of material fact involved in the real controversy between the parties has rightly dismissed the appeal of the petitioner-plaintiff.

7. In view of the above stated discussion, it is difficult to hold that any interference with the impugned order dated 16-1-2001 passed by the 3rd Extra Assistant Judge, Rajkot, in the proceedings of Civil Miscellaneous Appeal no.2/2001 filed by the present petitioners against the impugned order dated 7-12-2000 passed by the 5th Joint Civil Judge (S.D.), Rajkot, below Exh.23 in the proceedings of Regular Civil Suit no.1539/96, is warranted, and as such, the petition fails and stands disposed of as rejected with no order as to costs. Rule is discharged.

At this stage, learned Advocate for the petitioner has prayed for stay of operation and implementation of the order so as to carry further the dispute to the higher forum. In the facts and circumstances of the case, I do not find any justification in granting the stay, and hence, the request is rejected.

(A.K.Trivedi,J.)

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